

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653 (KRH)
.
.
CIRCUIT CITY STORES . 701 East Broad Street
INC., . Richmond, VA 23219
.
.
Debtor. . October 15, 2009
. 2:15 p.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 UNIDENTIFIED FEMALE SPEAKER: All rise. Court is now
2 in session, please be seated and come to order.

3 THE CLERK: In the matter of Circuit City Stores,
4 Incorporated, hearing on items 1 through 48 as set out on
5 debtors' agenda.

6 THE COURT: I note for the record that Ms. Tavenner
7 didn't even need to change seats.

8 MR. FOLEY: Exactly, exactly. We're trying to keep
9 it efficient for her.

10 Your Honor, Doug Foley on behalf of the debtors, with
11 McGuireWoods. Your Honor, if we could, with me at counsel
12 table is Sarah Boehm from my firm, as well as Ian Fredericks
13 from Skadden Arps. Here from the client, Your Honor, is
14 Michelle Moser, who is the Principle Financial Officer.

15 Your Honor, we do have one matter that we'd like to
16 take out of order, it's an uncontested matter involving a
17 substantial resolution and settlement with the PBGC. Counsel
18 for the PBGC is here from Washington, D.C., would like to get
19 back on the road before traffic gets too bad. Sarah Eagle.
20 She's here with PBGC. So, if we could, Your Honor, take
21 matters 17 and 18 out of order.

22 Your Honor, matter 17 is simply our procedural motion
23 to shorten the notice period with respect to the settlement.
24 Your Honor, we haven't received any responses to that. The
25 Committee, obviously, has been involved in the discussions with

1 respect to this settlement and have approved the settlement.
2 We would ask that the Court grant the relief sought in item
3 number 17, which is on the agenda.

4 THE COURT: All right. Mr. Foley, we certainly can
5 take them out of order. Does any party wish to be heard in
6 connection with the debtors' motion for expedited hearing on
7 this matter?

8 (No audible response)

9 THE COURT: All right, there being no objection, the
10 motion for order shortening the time will be granted.

11 MR. FOLEY: Thank you, Your Honor. Mr. Fredericks
12 and Ms. Eagle will address the matters under item number 18 on
13 the docket.

14 THE COURT: All right, very good.

15 MR. FREDERICKS: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. FREDERICKS: Ian Fredericks with Skadden Arps on
18 behalf of the debtors.

19 Before you is the motion to approve a settlement
20 agreement with the PBGC. By way of background, the debtors,
21 prior to the petition date, maintained a pension plan. The
22 pension plan covered approximately 22,000 participants. Prior
23 to the petition date, the plan had been frozen twice, meaning
24 that no further benefits would accrue, but there were still
25 obligations, you know, going forward to the plan participants.

1 In March or -- I'm sorry, beginning, I believe,
2 after the liquidation, the debtors began discussions with the
3 PBGC concerning whether or not to terminate the pension plan,
4 consensually or through a distress termination and turn the
5 obligations to administer the plan over to the PBGC.

6 I believe in May of 2009, the debtors and the PBGC
7 entered into an agreement whereby the PBGC did assume those
8 obligations and begin to administer the plan. It was effective
9 as of March 31st, 2009.

10 In connection with the pension plan, the PBGC filed
11 three proofs of claim against the debtors, although the PBGC,
12 pursuant to a stipulation, each claim was deemed filed against
13 each of the debtors because the PBGC alleged that all the
14 debtors were jointly and severally liable as well as the PBGC
15 alleged that the debtors non-debtor Canadian affiliates, which
16 are the subject of the CCAA proceedings, were also jointly and
17 severally liable.

18 The PBCG three claims, after they were amended,
19 ultimately broke down to an underfunded benefit claim for
20 allegedly the shortfall between the values -- the pension plan
21 assets as of March 31st, 2009 and ultimately what needed to be
22 paid out. The PBGC alleged that that claim was approximately
23 \$36.9 million. They filed a minimum funding claim, which was
24 allegedly amounts that the debtors had not contributed to the
25 pension plan, as of the petition date. Ultimately, that claim

1 was amended to zero as the debtors had made all of their
2 required minimum funding obligations.

3 And the third claim was what I'll call the premium
4 claim and broke down into two types of premiums. The first was
5 an annual premium that PBGC charged pension companies that held
6 pension plans, on an annual basis that was filed in the amount
7 of approximately \$159,000 and was filed as an admin. claim for
8 the 2009 year.

9 The second was a termination premium claim which came
10 about as a result of recent amendments to ERISA by Congress and
11 this was, essentially, a claim that was calculated based on the
12 number of plan participants and then projected out for three
13 years. I believe, pursuant to the legislative history, it was
14 designed to defray some of the costs of companies that tried to
15 avoid their pension plan liabilities to the PBGC. That claim
16 totaled approximately \$82 million and was ultimately filed as
17 an unsecured claim.

18 Beginning in, I guess beginning in August, at the
19 time the debtors filed their plan and disclosure statement, the
20 debtors began discussions with the PBGC concerning their
21 claims, possible claims litigation as well as litigation
22 concerning the plan. In particular, the debtors contended that
23 the termination premiums were not actual claims filed against
24 the debtors' estates, the PBGC, obviously disagreed and because
25 there was very unsettled law out there, or I'm sorry, there was

1 almost no law and the law there was, somewhat unsettled on what
2 these new provisions meant, the PBGC and the debtors decided
3 that trying to resolve those claims benefitted both sides as
4 opposed to proceeding with litigation.

5 Similarly, although the U.S. Airways case is out
6 there concerning how you calculate the underfunded benefit
7 plan, the debtors disagreed with using the PBGC and the -- I'm
8 sorry, ERISA and the associated regs as the appropriate method
9 for calculating the underfunded claim.

10 Likewise, PBGC contended that substantive
11 consolidation was inappropriate, in this case, especially since
12 they alleged they had claims against all of the 18 debtors.

13 Against that backdrop, the parties, with the support
14 of the Creditors' Committee, entered into the settlement
15 agreement to avoid all litigation. The settlement agreement
16 provides for the full and final satisfaction of all of the
17 PBGC's claims. The PBGC will have an allowed claim in the
18 amount of \$33.5 million. That claim will be paid in full
19 within ten days after entry of an order approving this
20 agreement, I believe.

21 The PBGC and the debtors exchanged a mutual release,
22 releasing the debtors, non-debtor affiliates, mainly the
23 Canadian affiliates, as well as some other foreign affiliates
24 and one U.S. limited partnership, for which the debtor held an
25 approximate two-third interest in, and was the managing

1 partner.

2 The PBGC agreed to release claims against the
3 debtors' directors, officers, non-debtor affiliates, except to
4 the extent of breach of fiduciary duty claims, and the debtors
5 agree to insert a provision in the plan that basically provided
6 that except for claims against the debtors and their estates,
7 the plan did not effectuate a release exculpation or other
8 waiver of claims the PBGC may have. The debtors have agreed to
9 insert that in the plan prior to the confirmation hearing.

10 The debtors believe that with the significant
11 litigation risk concerning both the claims as well as
12 substantive consolidation, that approval of the settlement is
13 in the best interests of the debtors, their estates and
14 creditors and ultimately believe this will maximize value to
15 all creditors. It results in a significant waiver, claims
16 waiver, which -- and I believe -- as I mentioned, the
17 Committee, less the PBGC, was supportive of this. The debtors
18 did keep them apprised of the negotiations with the PBGC and
19 ultimately they approved of the settlement prior to it being
20 filed.

21 With that, I would ask the Court, unless the Court
22 has questions, to approve the settlement agreement and
23 authorize the debtors to carry out its provisions.

24 THE COURT: All right, thank you. Does any party
25 wish to be heard in connection with the debtors' motion for

1 approval of the settlement agreement?

2 (No audible response)

3 THE COURT: All right, Mr. Fredericks, there being no
4 objection to the debtors' motion, the Court finds that it is an
5 exercise of the debtors business judgment, and the Court will
6 grant the motion and approve the settlement.

7 MR. FREDERICKS: Thank you, Your Honor. With that, I
8 believe I'll turn over the remainder of the agenda to Mr.
9 Foley. Thank you, Your Honor.

10 MR. FOLEY: Your Honor, if Ms. Eagle can be excused,
11 for the PBGC.

12 THE COURT: Ms. Eagle can certainly be excused.

13 MR. FOLEY: Thank you, Your Honor. The rest of the
14 items on the agenda, beginning with matter number one, Your
15 Honor, this is the AmREIT motion for an administrative claim.
16 We have resolved that and it can be removed from the Court's
17 docket.

18 THE COURT: All right. It'll be removed.

19 MR. FOLEY: Your Honor, items number two, the
20 Motorola motion; item number three, the General Instruments
21 motion; item number four, the DIRECTV motion; item number six,
22 Your Honor, the SouthPeak motion; item number ten, Your Honor,
23 the Towne Square motion; item number 12, Your Honor, the Slam
24 Brands motion; item number 13, the Columbus Dispatch motion, we
25 have been in contact with all of those parties, and all of

1 those parties have requested, and we have agreed, to adjourn
2 their motions until the November 23rd hearing date at 10 a.m.,
3 which is currently scheduled for the confirmation date, Your
4 Honor. So, we would ask that the Court move those to the
5 November 23rd date at 10.

6 THE COURT: All right. Those matters will be removed
7 to November 23.

8 MR. FOLEY: Your Honor, item number five, this is
9 Sony's motion. We are still in discussions with them. They
10 have requested and agreed to adjourn their motion until the
11 November 3rd hearing date, which is at 11 a.m., Your Honor.

12 THE COURT: All right. Do we expect that we're going
13 to hear it on that day?

14 MR. FOLEY: We're still in discussions with them, I
15 don't expect we will go forward on the 3rd. I think they'll
16 probably agree to adjourn again. They just didn't want to go
17 all the way to the confirmation hearing at this point.

18 THE COURT: That's fine.

19 MR. FOLEY: Your Honor, item number eight, this is
20 the Infogain motion. Again, they have requested that it be
21 adjourned until November 3rd. We have reached -- the debtors
22 have reached a settlement in principle with them. There are
23 some nuances to it that we are still working through with them,
24 with respect to timing of payment of a reconciled
25 administrative claim. We're working with the committee to get

1 their feedback as to what's appropriate with respect to timing
2 of payment. We hope we can resolve that by the November 3rd
3 hearing date. If we are not able to do so, we are checking
4 with counsel for Infogain whether they want to go forward on
5 that date.

6 So, that Your Honor is aware of the background of
7 this one, it's a request for payment of an administrative claim
8 incurred in the ordinary course of business, post petition,
9 under a services contract that was ultimately rejected. We
10 have reconciled the amount that's owed prior to the time we
11 gave them notice. There is some dispute as to whether or not
12 they could continue to accrue charges under the contract in
13 addition to out-of-pocket costs and expenses. That's the piece
14 that we were negotiating over, so we're going to check with
15 their counsel to see if they want to go forward, but we'll
16 advise the Court promptly if we expect to have contested
17 hearing on that date.

18 THE COURT: All right, thank you.

19 MR. FOLEY: Your Honor, with respect to item number
20 nine, this is the Site A motion. They, as well, have agreed to
21 adjourned until the November 3rd hearing date. We don't expect
22 the matter to go forward on that date. They just did not want
23 -- they weren't comfortable going out longer, they just wanted
24 to go to the next hearing date.

25 THE COURT: Very good.

1 MR. FOLEY: Your Honor, item number 14, this is the
2 OmniMount motion which has two parts to it. One is dealing
3 with the issue of whether they were timely in responding to the
4 objection and the motion to reconsider, as well as the
5 underlying substance of the claim objection.

6 They have requested, and they're making a settlement
7 proposal to us this week, we have not yet received, to resolve
8 the matter. They've requested that their motion be adjourned
9 until the November 3rd hearing date.

10 THE COURT: All right, very good.

11 MR. FOLEY: Your Honor, item number 15, we're working
12 through our motion to terminate the surety bonds. Safeco filed
13 a response, we're working through their response to see if we
14 can't reach resolution. We request that that matter be
15 adjourned until the November 3rd hearing date.

16 THE COURT: All right.

17 MR. FOLEY: Your Honor, item number 16 on the docket,
18 this is the motion by John Raleigh for late filed proof of
19 claim. Several of these, as Your Honor is aware, are scheduled
20 for status hearing on the confirmation date, November 23rd,
21 however, just so the Court is aware of how we intend to proceed
22 with some of these late claim motions, some of them involve, as
23 Your Honor is aware, the 503(b)(9) bar date which if the claim
24 is allowed, would result in hundred cent dollar claim, some
25 involve the general unsecured bar date, some involve the first

1 administrative period bar date and some involve the government
2 bar date. So, there may be a sliding scale approach as to how
3 we deal with that. We have -- we will be filing a supplemental
4 memorandum with respect to the motion pending by EDC which is
5 the one that's been pending the longest and Your Honor has
6 heard from them several times, which is currently scheduled for
7 the confirmation hearing, where we will set forth what we
8 believe the legal standard is for excusable neglect and Your
9 Honor can tell us whether you agree with that or not, in the
10 context of their particular facts and circumstances. And we
11 hope that once we have some guidance with respect to one of
12 these, that we could then apply that approach that the Court
13 takes with respect to the others, to see if we can't reach
14 consensual resolutions, one way or the other.

15 Obviously, there's facts and circumstances to each
16 one of these that's a little bit different. Some are more
17 sympathetic than others, some are more meaningful to the estate
18 than others and so, we're trying to take a practical sliding
19 scale approach to this rather than immediately jump into
20 litigation with each one of these. The fact that we're not
21 going forward on all of these at once, obviously, is without
22 prejudice to these parties, you know, diligence in prosecuting
23 it and we've told them that, and Your Honor is aware of that.
24 So, we just wanted to give the Court that background. And so
25 the John Raleigh motion, they have agreed to adjourn their

1 motion until the December 7th hearing date, which is at 2 p.m.,
2 Your Honor.

3 THE COURT: All right. And then by that time they're
4 hoping that they're going to have some sort of guidance as far
5 as what happens at the confirmation hearing with regard to the
6 excusable neglect standard.

7 MR. FOLEY: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. FOLEY: Items number 19 through 44, Your Honor,
10 is the status hearing with respect to our numerous omnibus
11 claim objections that we filed.

12 I have a demonstrative exhibit that I'd like to hand
13 up to the Court, just to sort of -- it's a one page exhibit
14 that will show the status of where we are with a lot of these.

15 THE COURT: You may. Thank you. Mr. Foley, before
16 we proceed onto the -- did we address item number seven or are
17 you going to come back to that?

18 MR. FOLEY: I apologize, Your Honor, that's the
19 motion by Newport News for payment of administrative claim for
20 some taxes.

21 THE COURT: Right.

22 MR. FOLEY: It's a small amount, we believe we have a
23 settlement in principle with them but they have requested that
24 their motion be adjourned until the December 7th hearing date
25 at two.

1 THE COURT: And that's fine. And item number 11, the
2 Schimenti Construction Company claim.

3 MR. FOLEY: Yes, Your Honor. Schimenti Construction,
4 I apologize for skipping over that one, Your Honor. That one
5 involves, obviously, a 2004 Examination. What we have done
6 with Schimenti Construction is, we have provided them a lot of
7 documentation, actually, with respect to two construction
8 projects that they were involved in. One was a renovation of a
9 location in Manhattan, the other was in North Plainfield, New
10 Jersey, actual construction project. Neither -- one of them
11 was ultimately opened before we filed, the other one was never
12 opened. The leases were rejected, they have proceeded with
13 some discovery, as Your Honor may be aware from the spring,
14 with respect to the landlords, with respect to any rights they
15 may have there, with respect to lien claims, and whatnot.

16 Schimenti has asserted a couple of claims in our
17 case. One is a claim, obviously, for construction services,
18 for which they rendered and for which we have not paid. We
19 have reconciled the dollar amounts of those claims to within
20 \$17,000. I think the total claim is around a million dollars,
21 but we're very close in which the actual dollar amount should
22 be.

23 The issue that they have raised is, they believe that
24 some of the retainage amount owed under the contract is somehow
25 entitled to trust fund status or not property of the estate

1 under 541, some kind of a constructive trust theory. We have
2 exchanged pretty extensive, you know, analysis of that claim
3 and our position with respect to it, in letters with them.
4 We've actually advised them of the Court's opinions in Land
5 America as well and they've read those and they are chewing on
6 those.

7 But we understand that they may be filing an
8 adversary proceeding to assert those claims and we'll respond
9 accordingly, if and when they do so.

10 With respect to the 2004 Exam motion, Your Honor,
11 again we have produced probably thousands of pages of documents
12 to them already and, in fact, there's probably little documents
13 we have left to produce to them. They have agreed that if they
14 do file the adversary proceeding, in which they will want to
15 take discovery, that the 2004 Examination will become moot.

16 But in the meantime, they have requested that the
17 motion be adjourned until the December 7th hearing date, at
18 two. We do have a hearing date on November 3rd, I believe,
19 actually it's the December 7th hearing date as well, with
20 respect to a good versus non-goods objection that they are
21 included in -- this is one of the other claims that they've
22 asserted, Your Honor. We entered into a contract for
23 construction services with them. They have identified
24 approximately \$47,000 of what they are owed as construction
25 materials that they are asserting are entitled to priority

1 status under 503(b)(9). They are aware of Your Honor's ruling
2 as to the UCC definition of goods and the predominant purpose
3 test adopting the put on purpose test.

4 We're working with them to figure out the best way to
5 streamline having a ruling on their particular facts and
6 circumstances. Your Honor is aware that the ruling that you
7 made was without prejudice to any individual's facts and
8 circumstances. So, we're going to try to see if we can't
9 present that in a stipulated fact form for Your Honor to make a
10 ruling at which point they may want to take an appeal of not
11 only the factual findings but the legal conclusions that Your
12 Honor has already reached.

13 So, that's the long-winded story with respect to
14 Schimenti Construction. The matter that's on the docket today,
15 Your Honor, they've agreed to adjourn until December 7th.

16 THE COURT: Very good, thank you.

17 MR. FOLEY: Your Honor, items number, again, 19, 20,
18 21, 22, 23, 24, 25, 26, 27, I'll skip over 28 and 29 for a
19 moment, 30, 31, skip over 32 through 35 for a moment, number
20 36, 37, 38, 39, 40, 41, 42, 43 and 44, Your Honor, these are
21 status hearings on omnibus claim objection responses that we're
22 requesting the Court, and we've advised these parties, that
23 we'd like to adjourn these until the December 7th hearing date
24 at two, so we can continue to work through resolving some of
25 these. Some of these are procedural in nature that we think if

1 we just have time to talk to the parties that filed responses
2 we should be able to get consensual resolutions.

3 Some of them are substantive and I'll talk about the
4 ones I skipped over shortly, Your Honor, but I wanted to just
5 advise the Court about this chart that we have prepared and
6 we're going to probably modify this at future hearings but we
7 wanted to give the Court a very simple, one page sort of
8 summary of where were on claim objections.

9 And what this shows, Your Honor, and it's not as
10 tick-and-tie accounting document, but it's really more of a
11 schematic to show how many omnibus objections we filed, the
12 number of claims that are included in each of those omnibuses,
13 what the value, dollar amount as filed was of those particular
14 claims, the amount of claims that had been subject to an order
15 by the Court granting the relief sought in the objection which
16 could have been merely a reclassification, not necessarily a
17 reduction or disallowance, the dollar amount of what the Court
18 has ordered and then a column that shows the amounts that are
19 continued and pending based upon responses that have been
20 filed.

21 So, Your Honor, the middle column which shows -- well
22 the first column shows that we have filed objections to 7,398
23 claims with an as filed value of \$6.1 billion.

24 Now, Your Honor, some of these claims have been
25 objected to on multiple bases, so there's some duplication in

1 that number as well as the fact that there are some objections
2 that we have withdrawn from there on those objections, but
3 they're still included in that number, so we haven't completely
4 refined this chart yet, but it's a close approximation of where
5 we're at.

6 The claim count that is listed in the as ordered
7 column, there are orders that the Court has entered, 6,626
8 claims have been subject to a court order of some kind and,
9 again, it could be merely a reclassification, it doesn't adjust
10 the dollar amount. It could be a reduction, it could be a
11 disallowance, but the dollar amount shows that of the claims
12 that we've objected to, in dollar amounts, that the Court has
13 ordered them down to \$381 million so far. Not all of those
14 have been allowed, obviously. In fact, very few have. Some of
15 them have been reduced or reclassified or modified in someway
16 and then the amount that shows in the continue pending column,
17 Your Honor, is 559 claims for which people have filed responses
18 with an as filed value of \$620 million.

19 And, so, Your Honor, as we get more resolutions,
20 we'll probably have another column added here that shows as
21 resolved by stipulation and then, hopefully, the arithmetic
22 will tick-and-tie a little bit better. But this is sort of
23 where we're at, Your Honor. We're, again, working through the
24 claims, in coordination with the Creditors' Committee,
25 obviously, because they have an interest in a lot of these

1 claims, especially the larger ones, and we're making a lot of
2 progress. So, we would ask that those omnibus objections that
3 I've already mentioned be adjourned until the December 7th
4 hearing date so we can continue to make progress in that
5 regard.

6 THE COURT: Those items will be adjourned to December
7 7 and your chart is quite helpful.

8 MR. FOLEY: Thank you, Your Honor. The items under
9 number 28 and 29, which I skipped over, these involve the 11th
10 and 12th omnibus objection to certain 401k claims, based upon
11 parties who have an interest in a 401k plan or a pension plan
12 that has been terminated, as Your Honor is aware, the PBGC is
13 administering.

14 Your Honor, those claims Your Honor has already
15 ordered several of the claims to be disallowed. This objection
16 was, obviously, without prejudice to any parties' rights to the
17 funds that are in those plans and I think they filed claims
18 just out of an abundance of caution against the estate as
19 thought it was a claim against the estate, but it's not, it's
20 really a claim against these funds which are segregated and are
21 not property of the estate and these objections will have not
22 affect upon those rights.

23 So, what we have done, Your Honor, with respect to
24 the responses that have been filed to omnibus 11 and 12, we
25 filed a notice of hearing last night on the merits, to have a

1 hearing on the merits of these responses for November 3rd at 11
2 and we've given specific notice to each of the responding
3 parties that appear to be asserting a claim based upon an
4 interest in a 401k plan or a pension plan so that they have an
5 opportunity to be heard before the Court and Your Honor can
6 make a substantive ruling with respect to those remaining
7 responses.

8 There will be one that Ms. Boehm will address at item
9 number 45 that we were going to ask for similar relief but
10 there's only three responses with respect to that omnibus
11 objection.

12 So, with respect to items number 28 and 29, Your
13 Honor, we're asking that those be set down pursuant to the
14 noticed that we filed for November 3rd at 11 for a hearing on
15 the merits and we, again, I believe we've communicated with
16 your chambers and we will provide to the Court copies of the
17 actual claims that have been filed --

18 THE COURT: I think that would be helpful.

19 MR. FOLEY: -- by everyone of these respondents as
20 well as their -- the Court has access to their responses
21 because they're on ECF, we'll be able to go forward on that
22 day.

23 THE COURT: All right.

24 MR. FOLEY: Your Honor, items number 32, 33, 34, and
25 35, this is the 15th, 16th, 17th and 18th omnibus objections.

1 These are objections based upon our evaluation of the claims
2 being the party asserting an interest in equity in the debtor
3 and not asserting a claim against the debtor.

4 The relief we are simply seeing in these omnibus
5 objections is to reclassify these claims that were filed on
6 proof of claim forms as equity interest in the debtor, which to
7 the extent Your Honor confirms a plan of liquidation in this
8 case, will ultimately be extinguished as part of the plan of
9 confirmation.

10 THE COURT: So, they were filed on the wrong form.

11 MR. FOLEY: They were filed on the wrong form. These
12 are proofs of interest, not proofs of claim. And, again, with
13 respect to those, we've looked at all these responses, they all
14 assert, clearly assert to us that these are equity interest and
15 what the most efficient way we believe to proceed is similar to
16 the 401k pension is to have these set for November 3rd at 11,
17 so we have sent out a notice, very specific notice of hearing
18 with respect to all of these responses, to have these heard on
19 November 3rd at 11, on the merits and, again, similar with the
20 other matters, Your Honor, we will provide the Court copies of
21 all of the proofs of claim filed by all of the responding
22 parties and we've given them specific notice and we'll file
23 certificates of service with respect to that, so that we can go
24 forward on the merits on November 3rd.

25 THE COURT: All right, very good.

1 MR. FOLEY: Your Honor, I believe that deals with
2 everything except for items number 45 through 48 and Ms. Boehm
3 will address those to the Court.

4 THE COURT: All right, thank you.

5 MS. BOEHM: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 MS. BOEHM: Sarah Boehm with McGuireWoods on behalf
8 of the debtors. Item number 45 on the agenda is the debtors
9 38th omnibus objection. This is set for status hearing for the
10 first time today. This objection was to the disallowance of
11 certain qualified pension plan and 401k claims, similar to the
12 way Mr. Foley described them. This was based on objections to
13 claims because they are not against assets of the estate, the
14 are against separate legal entities.

15 We did receive three responses to this and the agenda
16 reflected that we were going to continue this for status to
17 November 7th (sic) but what we now intend to do is to
18 separately notice this for hearing on the merits for November
19 3rd, so that it can go forward at the same time as the other
20 401k and pension claims. This included 33 claims for a total
21 of approximately 890,000 for the ones who didn't respond, but
22 we'll proposed to go ahead and submit an order disallowing
23 those claims and for the three that we did receive a response
24 for, I have left messages for them to let them know that it's
25 going to be set for November 3rd. We will file that and

1 separately mail them the notice as well.

2 THE COURT: All right, yes, as soon as possible
3 because if they got the notice about December 7th, they could
4 be confused.

5 MS. BOEHM: That's why I tried to call them.

6 THE COURT: All right, thank you.

7 MS. BOEHM: I'll followup with them. Item number 46
8 on the agenda is the 39th omnibus objection to claims. This
9 deals with the reclassifying claims or portions of claims that
10 asserted administrative priority under 503(b)(9) and
11 reclassifying them to general unsecured claims because they
12 didn't meet the requirements of 503(b)(9) and that they were
13 received by the debtors outside of the 20 day period.

14 This included 19 claims. We received two responses.
15 One of the responses that we received agrees with our objection
16 and has since filed an amended claim downwardly amending their
17 claim to agree with our objection and the other claim would
18 need to be continued, so we would propose to submit an order
19 for all non-responding disallowing their claims and adjourning
20 the one response that we have. And we will adjourn those for
21 further status to December 7th.

22 THE COURT: All right.

23 MS. BOEHM: Item 47 on the agenda is our 40th omnibus
24 objection to claims. This sought the disallowance of certain
25 claims that were asserted against a domestic debtor, for which

1 we showed no liability. This was basically a confusion with
2 InterTAN that is a domestic company that was a debtor in this
3 case and InterTAN Canada, which has its own separate Canadian
4 proceedings. It included 27 claims filed in the approximate
5 amount of \$1.8 million. We only received one response to this
6 objection and they said they were sorry, they filed it in the
7 wrong case, they have been paid by Canada and they can disallow
8 their claim, was the gist of it. It was company from Hong Kong
9 and it wasn't worded exactly like that, but that's the way it's
10 being treated. So, for this one, we will be seeking the
11 disallowance of all the claims with no adjournments.

12 THE COURT: All right, very good.

13 MS. BOEHM: Item 48 on the agenda is our 41st omnibus
14 objection that sought the disallowance of certain claims for no
15 liability, because they were either paid prepetition or
16 satisfied post petition.

17 This included 23 claims for approximately \$10.2
18 million. We've only received one response from a creditor that
19 is involved in multiple objections and we're working through a
20 resolution with them. So, for non-responding claimants, we
21 will seek an order disallowing their claims and their one
22 response will be adjourned for further status to December 7th.

23 THE COURT: All right, very good.

24 MS. BOEHM: That's all I have, Your Honor. Mr.
25 Fredericks has one other item he needs to address

1 THE COURT: Okay, thank you.

2 MR. FREDERICKS: Good afternoon, again, Your Honor.
3 For the record, Ian Fredericks of Skadden Arps. I wanted to
4 alert Your Honor to some recent filings and the procedure by
5 which we are proposing to move forward.

6 As Your Honor may be aware, your were kind enough to
7 give us a special hearing date on November 12th, to hear oral
8 argument on a few objections we plan to file that have pretty
9 significant legal issues for the case.

10 On late Monday, last Tuesday evening, we filed five
11 omnibus objections which really amount to three. Three of them
12 relate to issues of setting off receivables and how you set off
13 receivables, whether you can setoff pre and post petition
14 receivables. The debtor can do it against pre or post petition
15 claims. How that's impacted by Bankruptcy Code Section
16 503(b)(9) and we imagine that various creditors will also raise
17 the issue of recoupment.

18 So, we are proposing, subject to Your Honor granting
19 it eventually, at November 12 proceeding with oral argument to
20 resolve kind of those legal issues so that we can then, like we
21 did with goods, you know, try to apply those throughout the
22 case and hopefully you're able to reach consensual resolutions.
23 We don't anticipate any factual evidence at that particular
24 time, we think it's pretty straightforward legal issues and
25 ultimately the factual disputes over when exactly a claim may

1 have arose or when exactly the receivable may have arose or
2 depending on the standard Your Honor grants with respect to
3 recoupment, how that ultimately is applied are all factual
4 issues that we can resolve subsequent to that hearing.

5 In addition to that, we filed two objections, really
6 one dealing with Bankruptcy Code Section 502(d) and whether or
7 not it can be applied to 503(b)(9) claims. Again, we think
8 those are entirely legal issues that can be resolved and then,
9 ultimately, if necessary, any factual issues later.

10 I don't know if Your Honor -- I'm sure Your Honor has
11 tons of questions about the legal issues, but as of right now,
12 I don't know if Your Honor is interested. The briefing on
13 502(d) is pretty extensive, we are certainly willing to send
14 you all the -- have all the papers delivered to chambers for
15 you. I don't think that's your customary practice, but if Your
16 Honor would like to do that, we can have binders sent over
17 along with the exhibits.

18 THE COURT: I don't need to have binders sent over
19 with regard to them and all the counter parties to these are
20 aware that we're going to be proceeding just with those legal
21 arguments on those days. And there was some confusion when we
22 had the goods hearing on summary judgment, some parties thought
23 we were going to go forward with the entire matter that day.

24 MR. FREDERICKS: We tried to be very clear, both in
25 the title of the objection, that we were requesting first a

1 waiver of the requirement that the first hearing proceed as a
2 status conference and then in the objection, I believe in at
3 least two and possibly three places, we noted that we intended
4 to ask the Court to resolve the threshold legal issues at the
5 hearing and reserve factual matters for a subsequent hearing at
6 a date and time to be determined, if necessary.

7 We've been in discussions with some of the biggest
8 players, they've kind of known that these were coming down the
9 pike, but we tried to be very clear, I believe, also in the
10 notice as well, in the cover of the notice. We didn't want to
11 have the same issue that happened with goods, non-goods.

12 THE COURT: And just approximately how many claimants
13 are we talking about that are going to be involved with these
14 hearing?

15 MR. FREDERICKS: I believe it's a total, in total
16 it's approximately 150 claimants. The issues are bigger for
17 some as opposed to others, and so I imagine that some of them
18 may not respond at all, and they may collectively agree, you
19 know, to get together, but I really think they're all going to
20 be raising exactly the same arguments, but I believe in total
21 it's about 150 claimants.

22 THE COURT: Okay. And, then -- and generally I'm
23 familiar with the arguments that you're talking about, and then
24 I don't need to see the claims, then, with regard to those, I
25 can rely on the pleadings that are going to be filed, since

1 we're just dealing with the legal issues that are going to be
2 raised at this point in time, to differentiate from the other
3 ones that we had talked about.

4 MR. FREDERICKS: No, I don't believe Your Honor will
5 need to see the claims. On the exhibits we put forward the
6 amounts that we were talking about. There will, obviously, be
7 some dispute, presumably over our receivables, but I don't
8 believe you're going to be able to glean any of that from the
9 proofs of claim and there may be some disputes over the
10 preference amounts that we had put into the chart, as a little
11 bit of a preview. While we ultimately think that you can use
12 502(d) to temporarily disallow a claimant regardless of what
13 the preference is, that's not the relief we've sought here.
14 We've sought to kind of reduce the claim by the amount of the
15 alleged preference. In some instances that may wipe out a
16 claim in full and others it may not. So that's why I say some
17 creditors may not care, you know, given the numbers that are at
18 issue. They may care but they may not actually decide that
19 it's worth litigating given that other people are going to be
20 litigating the issue. I don't believe Your Honor will need to
21 see the proofs of claim, no.

22 THE COURT: Very good. All right. Mr. Foley, did
23 you have something further?

24 MR. FOLEY: Your Honor, just to add -- yesterday I
25 received calls from several attorneys that either represent

1 some of these creditors that are subject to this objection, or
2 represent creditors who are not subject to this objection but
3 have this issue, so I just wanted to advise the Court, you may
4 not only be hearing from the people whose claims are under
5 objection but people who have an interest in the outcome of th
6 is motion, so you may get, for lack of a better word, amicus
7 briefs on this as well. So, I think it will be well, well,
8 well briefed for the Court and I don't think you'll have any
9 shortage of interested parties expressing their view.

10 THE COURT: Well, the Court can use all the help it
11 can get.

12 MR. FOLEY: Right.

13 THE COURT: All right, very good. Well, thank you
14 for the heads-up on that. And, you know, we'll be, obviously
15 prepared to go forward with that on the 12th.

16 MR. FREDERICKS: All right, thank you very much,
17 Your Honor. Unless Your Honor has any questions, I believe
18 that's it.

19 THE COURT: That's everything for today?

20 MR. FREDERICKS: I believe so.

21 THE COURT: We'll be adjourned.

22 MR. FREDERICKS: Thank you, Your Honor.

23 THE CLERK: All rise. Court is now adjourned.

24 * * * * *

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C E R T I F I C A T I O N

I, ELAINE HOWELL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Elaine Howell

Date: October 30, 2009

ELAINE HOWELL

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